

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2667

Introduced by Assembly Member Bloom

February 21, 2014

An act to add Sections 1802.22, 1802.23, 1802.24, 1802.25, 1803.12, and 1803.13 to amend Section 1812.622 of, and to add Section 1812.650 to, the Civil Code, relating to electronic devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, as amended, Bloom. ~~Retail installment contracts:~~ *Rental-purchase agreements:* electronic devices: monitoring technology.

Existing law, the ~~Unruh Act~~, *Karnette Rental-Purchase Act*, provides for the regulation of ~~retail installment contracts~~, *rental-purchase agreements*, as defined. Existing law requires ~~retail installment contracts~~ *rental-purchase agreements* to contain specified notices, including, among other things, information on costs and terms of ~~repayment~~ *payment*. Existing law makes it a misdemeanor to willfully violate the provisions regulating ~~retail installment contracts~~. *rental-purchase agreements*.

This bill would add to these provisions regulating ~~retail contracts~~ *rental-purchase agreements* provisions requiring a ~~retail seller~~ *lessor* to provide clear and prominent notice to a ~~buyer~~ *consumer* and obtain express consent from the ~~buyer~~ *consumer* at the time of sale of the ~~lessor~~ *and the consumer enter into a rental-purchase agreement for an* electronic device if that device has ~~monitoring technology~~ or geophysical location tracking technology installed and would prohibit a ~~seller~~ *lessor* from installing the technology without providing clear and prominent notice and obtaining express consent from the ~~buyer~~. *consumer*. The

bill would prohibit a ~~seller~~ *lessor* from using a ~~monitoring technology~~ or geophysical location tracking technology on an electronic device for any purpose other than to prevent fraud. *The bill would prohibit a lessor from using monitoring technology on an electronic device.*

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1802.22 is added to the Civil Code, to~~
2 ~~read:~~

3 ~~1802.22. “Electronic device” means a desktop or laptop~~
4 ~~computer, handheld device, tablet, smart phone, or other electronic~~
5 ~~product or device that has a platform on which to download, install,~~
6 ~~or run any software program, code, script, or other content.~~

7 ~~SEC. 2. Section 1802.23 is added to the Civil Code, to read:~~

8 ~~1802.23. “Clear and prominent notice” means notice presented~~
9 ~~in an understandable language and syntax, in the predominantly~~
10 ~~used language for that communication, and that:~~

11 ~~(a) In textual communications, the required disclosures are of~~
12 ~~a type, size, and location sufficiently noticeable for an ordinary~~
13 ~~consumer to read and comprehend in print that contrasts highly~~
14 ~~with the background on which they appear.~~

15 ~~(b) In communications disseminated orally or through audible~~
16 ~~means, the required disclosures are delivered in a volume and~~
17 ~~cadence sufficient for an ordinary consumer to hear and~~
18 ~~comprehend.~~

19 ~~(c) In communications disseminated through video means, the~~
20 ~~required disclosures are in writing in a form consistent with~~
21 ~~subdivision (a) of this definition and appear on the screen for a~~
22 ~~duration sufficient for an ordinary consumer to read and~~
23 ~~comprehend them, and in the same language as the predominantly~~
24 ~~used language for that communication.~~

1 ~~(d) In communications made through interactive media,~~
2 ~~including the Internet, online services, and software, the required~~
3 ~~disclosures are unavoidable and presented in a form consistent~~
4 ~~with subdivision (a), in addition to any audio or video presentation.~~

5 ~~SEC. 3. Section 1802.24 is added to the Civil Code, to read:~~

6 ~~1802.24. “Geophysical location tracking technology” means~~
7 ~~hardware, software, or an application that collects and reports data~~
8 ~~or information that identifies the precise geophysical location of~~
9 ~~an item, including, technologies that report the GPS coordinates~~
10 ~~of a computer or other item, the WiFi signals available to or~~
11 ~~actually used by a computer to access the Internet, the~~
12 ~~telecommunication towers or connections available to or actually~~
13 ~~used by a computer, the processing of any reported data or~~
14 ~~information through geolocation lookup services, or any~~
15 ~~information derived from any combination of the foregoing.~~

16 ~~SEC. 4. Section 1802.25 is added to the Civil Code, to read:~~

17 ~~1802.25. “Monitoring technology” means any hardware,~~
18 ~~software, or application utilized in conjunction with a computer~~
19 ~~that can cause the computer to capture, monitor, record, or report~~
20 ~~information about user activities by recording keystrokes, clicks,~~
21 ~~or other user-generated actions, capturing screenshots of the~~
22 ~~information displayed on a computer monitor or screen, or~~
23 ~~activating the camera or microphone function of a computer to~~
24 ~~take photographs or record audio or visual content through the~~
25 ~~computer’s Internet Webcam or microphone.~~

26 ~~SEC. 5. Section 1803.12 is added to the Civil Code, to read:~~

27 ~~1803.12. It shall be unlawful for a seller to fail to provide clear~~
28 ~~and prominent notice to a buyer and obtain express consent from~~
29 ~~the buyer at the time of sale of an electronic device if that device~~
30 ~~has monitoring technology or geophysical location tracking~~
31 ~~technology installed or to install monitoring technology or~~
32 ~~geophysical location tracking technology on an electronic device~~
33 ~~without first providing clear and prominent notice to the buyer and~~
34 ~~obtaining express consent.~~

35 ~~SEC. 6. Section 1803.13 is added to the Civil Code, to read:~~

36 ~~1803.13. It shall be unlawful for a seller to use monitoring~~
37 ~~technology or geophysical location tracking technology on an~~
38 ~~electronic device for any purpose other than the prevention of~~
39 ~~fraud.~~

1 *SECTION 1. Section 1812.622 of the Civil Code is amended*
2 *to read:*

3 1812.622. As used in this title:

4 (a) “Advertisement” means a commercial message in any
5 medium that directly or indirectly solicits or promotes one or more
6 specific rental-purchase transactions, excluding instore
7 merchandising aids. This definition does not limit or alter the
8 application of other laws, including Chapter 5 (commencing with
9 Section 17200) of Part 2 and Chapter 1 (commencing with Section
10 17500) of Part 3, of Division 7 of the Business and Professions
11 Code, to rental-purchase transactions.

12 (b) “Consumer” means a natural person or persons who rent or
13 lease personal property from a lessor pursuant to a rental-purchase
14 agreement or to whom a lessor offers personal property for use
15 pursuant to a rental-purchase agreement.

16 (c) “Lessor” means any person or entity that provides or offers
17 to provide personal property for use by consumers pursuant to a
18 rental-purchase agreement.

19 (d) “Rental-purchase agreement,” except as otherwise provided
20 in this subdivision, means an agreement between a lessor and a
21 consumer pursuant to which the lessor rents or leases, for valuable
22 consideration, personal property for use by a consumer for personal,
23 family, or household purposes for an initial term not exceeding
24 four months that may be renewed or otherwise extended, if under
25 the terms of the agreement the consumer acquires an option or
26 other legally enforceable right to become owner of the property.
27 A rental-purchase agreement is a lease subject to Title 1.5
28 (commencing with Section 1750) and Title 1.7 (commencing with
29 Section 1790).

30 “Rental-purchase agreement” shall not be construed to be, nor
31 be governed by, and shall not apply to, any of the following:

32 (1) A retail installment sale, as defined in Section 1802.5.

33 (2) A retail installment contract, as defined in Section 1802.6.

34 (3) A retail installment account, as defined in Section 1802.7.

35 (4) A lease or agreement that constitutes a security interest, as
36 defined in Section 1201 of the Commercial Code.

37 (5) A consumer credit contract, as defined in Section 1799.90.

38 (e) “Cash price” means the price of the personal property
39 described in the rental-purchase agreement that the consumer may

1 pay in cash to the lessor at the inception of the rental-purchase
2 agreement to acquire ownership of that personal property.

3 (f) “Cost of rental” means the difference between the total of
4 all periodic payments necessary to acquire ownership under the
5 rental-purchase agreement and the cash price of the rental property
6 that is subject to the rental-purchase agreement.

7 (g) “Fee” means any payment, charge, fee, cost, or expense,
8 however denominated, other than a rental payment.

9 (h) “Appliance” means and includes any refrigerator, freezer,
10 range including any cooktop or oven, microwave oven, washer,
11 dryer, dishwasher, or room air conditioner or air purifier.

12 (i) “Electronic set” means and includes any television, radio,
13 camera, video game, or any type of device for the recording,
14 storage, copying, printing, transmission, display, or playback of
15 any sound or image, but does not include any item that is part of
16 a computer system.

17 (j) “Computer system” means a computer processor and a video
18 monitor, printer, and peripheral items primarily designed for use
19 with a computer. Audio and video devices, which are commonly
20 used for entertainment and into which data may be downloaded
21 from a computer, are not part of a computer system.

22 (k) “Lessor’s cost” means the documented actual cost, including
23 actual freight charges, of the rental property to the lessor from a
24 wholesaler, distributor, supplier, or manufacturer and net of any
25 discounts, rebates, and incentives.

26 (l) “Total of payments” means the total amount of periodic
27 payments necessary to acquire ownership of the property that is
28 the subject of the rental-purchase agreement if the consumer makes
29 all regularly scheduled payments.

30 (m) *“Electronic device” means a desktop or laptop computer,*
31 *handheld device, tablet, smart phone, or other electronic product*
32 *or device that has a platform on which to download, install, or*
33 *run any software program, code, script, or other content.*

34 (n) *“Clear and prominent notice” means notice presented in*
35 *an understandable language and syntax, in the predominantly used*
36 *language for that communication, and that:*

37 *(1) In textual communications, the required disclosures are of*
38 *a type, size, and location sufficiently noticeable for an ordinary*
39 *consumer to read and comprehend in print that contrasts highly*
40 *with the background on which they appear.*

1 (2) *In communications disseminated orally or through audible*
2 *means, the required disclosures are delivered in a volume and*
3 *cadence sufficient for an ordinary consumer to hear and*
4 *comprehend.*

5 (3) *In communications disseminated through video means, the*
6 *required disclosures are in writing in a form consistent with*
7 *paragraph (1) and appear on the screen for a duration sufficient*
8 *for an ordinary consumer to read and comprehend them, and in*
9 *the same language as the predominantly used language for that*
10 *communication.*

11 (4) *In communications made through interactive media,*
12 *including the Internet, online services, and software, the required*
13 *disclosures are unavoidable and presented in a form consistent*
14 *with paragraph (1), in addition to any audio or video presentation.*

15 (o) *“Geophysical location tracking technology” means*
16 *hardware, software, or an application that collects and reports*
17 *data or information that identifies the precise geophysical location*
18 *of an item, including, technologies that report the GPS coordinates*
19 *of a computer or other item, the WiFi signals available to or*
20 *actually used by a computer to access the Internet, the*
21 *telecommunication towers or connections available to or actually*
22 *used by a computer, the processing of any reported data or*
23 *information through geolocation lookup services, or any*
24 *information derived from any combination of the foregoing.*

25 (p) *“Monitoring technology” means any hardware, software,*
26 *or application utilized in conjunction with a computer that can*
27 *cause the computer to capture, monitor, record, or report*
28 *information about user activities by recording keystrokes, clicks,*
29 *or other user-generated actions, capturing screenshots of the*
30 *information displayed on a computer monitor or screen, or*
31 *activating the camera or microphone function of a computer to*
32 *take photographs or record audio or visual content through the*
33 *computer’s Internet Webcam or microphone.*

34 SEC. 2. *Section 1812.650 is added to the Civil Code, to read:*

35 1812.650. (a) *A lessor shall provide clear and prominent*
36 *notice to a consumer and obtain express consent from the consumer*
37 *at the time the lessor and the consumer enter into a rental-purchase*
38 *agreement for an electronic device if that device has geophysical*
39 *location tracking technology installed. A lessor shall not install*
40 *geophysical location tracking technology on an electronic device*

1 *without first providing clear and prominent notice to the consumer*
2 *and obtaining express consent.*

3 *(b) A lessor shall not use geophysical location tracking*
4 *technology on an electronic device for any purpose other than the*
5 *prevention of fraud.*

6 *(c) A lessor shall not use monitoring technology on an electronic*
7 *device for any purpose.*

8 ~~SEC. 7.~~

9 *SEC. 3.* No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.